



Federal Communications Commission
Washington, D.C. 20554

May 19, 2010

DA 10-808

Small Entity Compliance Guide

Assessment and Collection of Regulatory Fees for Fiscal Year 2009

Report and Order
FCC 09-62
MD Docket No. 09-65
Released: July 31, 2009

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

Fax: 1-866-418-0232

fccinfo@fcc.gov

Assessment and Collection of FY 2009 Regulatory Fees

Per Section 9(a) of the Communications Act of 1934, as amended (the Act),¹ Congress mandates the Commission to assess and collect regulatory fees to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities. Most Section 9 regulatory fees are assessments that are paid annually, which for FY 2009 were due no later than September 22, 2009. There is an exception to this due date for a component of Section 9 regulatory fees involving small wireless services. These services are required to make payment of all regulatory fees up front for the entire term of their licenses. For these small wireless services, regulatory fees are due at the time a new license is obtained or renewed. Information regarding who must pay regulatory fees by service category is listed below:

Payment of Regulatory Fees

Media Services: Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2008 for AM/FM radio stations, VHF/UHF television stations and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2008. In instances where a permit or license is transferred or assigned after October 1, 2008, responsibility for payment rests with the holder of the permit or license as of the fee due date. **In the case of VHF/UHF licensees,** during FY 2009, the FCC did not assess FY 2009 regulatory fees for both digital and analog licenses from a licensee in the process of transitioning from analog to digital. Furthermore, stations that were broadcasting in both analog and digital on October 1, 2008 were assessed FY 2009 regulatory fees for their analog license only. Also consistent with the FCC's past practice, stations that were broadcasting in digital only on October 1, 2008 were not assessed regulatory fees for their digital license for FY 2009. In FY 2010, the FCC will collect regulatory fees from digital broadcasters. During the FY 2010 regulatory fee process, the FCC will again remind digital broadcasters of their regulatory fee obligations.

- **Wireline (Common Carrier) Services:** Regulatory fees must be paid for authorizations that were granted on or before October 1, 2008. In instances where a permit or license is transferred or assigned after October 1, 2008, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- **Wireless Services:** Commercial Mobile Radio cellular, mobile, and messaging services (fees based upon a subscriber, unit or telephone number): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2008. The number of subscribers, units or telephone numbers on December 31, 2008 will be used as the basis from which to calculate the fee payment.
- **Multi-Year Wireless Services:** The first eleven regulatory fee categories in our Schedule of Regulatory Fees (see Appendix C) pay what we refer to as "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount of their five-year or 10-year term of initial license, and only pay regulatory fees again for the license at the time of its next renewal. We include these eleven categories in our Schedule of Regulatory Fees to publicize the fee amounts for each year; however, we do not actually collect these fees on an annual basis.
- **Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):** Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2008.² Regulatory fees must also be paid for CARS licenses that were granted on or

¹ 47 U.S.C § 159(a).

² Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers =

before October 1, 2008. In instances where a CARS license is transferred or assigned after October 1, 2008, responsibility for payment rests with the holder of the license as of the fee due date.

- **International Services:** Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2008. In instances where a license is transferred or assigned after October 1, 2008, responsibility for payment rests with the holder of the license as of the fee due date. Regulatory fees must be paid for by terrestrial and satellite international bearer circuits, the payments of which are determined by the number of active (includes backup and redundant) circuits as of December 31, 2008. In addition, the FCC adopted a new methodology for calculating regulatory fees for international submarine cable operators in a Second Report and Order in MD Docket No. 08-65.³ The Order was released on March 24, 2009. Beginning in FY 2009, the FCC will calculate regulatory fees for international submarine cable operators on a per cable landing license basis, with higher fees being assessed for larger submarine cable systems and lower fees for smaller systems. However, this change in methodology does not amend the licensing rules regarding submarine cable systems, nor does it change the methodology on how the Commission calculates regulatory fees for terrestrial and satellite facilities—these facilities will continue to be assessed on a per 64 kbps circuit basis.⁴ During FY 2009, the FCC also deleted two small categories of international fees, International Public Fixed Radio and International High Frequency Broadcast Stations, from the regulatory fee schedule.⁵

Recordkeeping Requirements

- Licensees are responsible for submitting all payments and payment documents accurately, and on a timely basis, including Remittance Form 159, to avoid processing delays.
- Licensees who claim exemption from regulatory fees because of non-profit status are required to have a current IRS Determination letter or equivalent on file with the Commission.
- In instances where a payment has not been accurately posted, the licensee has the responsibility to provide proof of regulatory fee payment, including but not limited to, copies of cancelled checks and a copy of Remittance Form 159.

Enforcement

- Per section 159(c) of the Act, we are required to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, a late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for paying regulatory fees. Regulatory fee payment must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window, and not merely postmarked by the last day of the window. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions,

Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2008, rather than on a count as of December 31, 2008.

³ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 (2009).

⁴ Under Section 9(b)(4)(B) of the Communications Act, the FCC notified Congress 90 days before this change was implemented. The 90 day period lapsed on July 15, 2009.

⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, MD Docket No. 09-65, Notice of Proposed Rulemaking and Order, 24 FCC Rcd 5966 (2009).

including the Commission's Red Light Rule⁶ and the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA").

- We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and 47 C.F.R. §1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.
- Our regulatory fee rules provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.⁷ Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

Related Documents and Links

Report and Order, "Assessment and Collection of Regulatory Fees for Fiscal Year 2009," FCC 09-62, 24 FCC Rcd 10301 (2009); 74 Fed. Reg. 40089 (Aug. 11, 2009).

The following Public Notices and website Fact Sheets are available at <http://www.fcc.gov/fees/regfees.html>:

Public Notice, "Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees," DA 09-1841 (Sept. 2, 2009)

Public Notice, "FY 2009 Regulatory Fees: Submarine Cable Systems," DA 09-1853 (Sept. 2, 2009)

Regulatory Fees Fact Sheet, "What You Owe – Cable Television Systems for FY 2009" (Sept. 2009)

Regulatory Fees Fact Sheet, "What You Owe – Commercial Wireless Services for FY 2009" (Sept. 2009)

Regulatory Fees Fact Sheet, "What You Owe – International and Satellite Services Licensees for FY 2009" (Sept. 2009)

Regulatory Fees Fact Sheet, "What You Owe – Interstate Telecommunications Service Providers (ITSP) for FY 2009" (Sept. 2009)

Regulatory Fees Fact Sheet, "What You Owe – Media Services Licensees for FY 2009" (Sept. 2009)

Regulatory Fees Fact Sheet, "FCC Look-Up Website Available for Media Services Licensees Owing FY 2009 Regulatory Fees" (Sept. 2009)

Regulatory Fees Fact Sheet, "Use of the FCC Registration Number (FRN) is Mandatory" (Aug. 2008)

Regulatory Fees Fact Sheet, "Waivers, Reductions and Deferrals of Regulatory Fees" (Sept. 2009) (for FY 2009)

⁶ See 47 C.F.R. § 1.1910.

⁷ See 47 C.F.R. §§ 1.1161(c), 1.1164(f)(5), 1.1910.

Regulatory Fees Fact Sheet, “Regulatory Fee Exemptions” (Sept. 2009)

AM & FM Radio Fees Listing – Listing of FY 2009 Regulatory Fees by Call Sign and Facility ID Number

Licensees can also contact the Commission’s Financial Operations Help Desk regarding regulatory fees, at (877) 480-3201, Option 4, or e-mail inquiries to ARINQUIRIES@FCC.GOV.